

SURFACE TRANSPORTATION BOARD

ORDER OF PRESIDING ADMINISTRATIVE LAW JUDGE SCHEDULING ORAL
ARGUMENTS ON MOTION OF V AND S RAILWAY, LLC FOR ISSUANCE OF THIRD-
PARTY SUBPOENAS

Docket No. FD 36005

KCVN, LLC AND COLORADO PACIFIC RAILROAD, LLC—FEEDER LINE
APPLICATION—LINE OF V AND S RAILWAY, LLC, LOCATED IN CROWLEY,
PUEBLO, OTERO, AND KIOWA COUNTIES, COLORADO

Decided: June 27, 2016

On March 18, 2016, KCVN, LLC (KCVN) and its wholly owned subsidiary, Colorado Pacific Railroad, LLC (Colorado Pacific) (collectively applicants), jointly filed an application under the feeder line provision at 49 U.S.C. § 10907 to acquire a 121.9-mile line of railroad, known as the Towner Line, owned by V and S Railway, LLC (V&S) in southeast Colorado. In a decision served on April 15, 2016, the application was accepted and a procedural schedule established.

On May 25, 2016, V&S filed a motion asking that the Board issue subpoenas to certain third parties (V&S Motion for Subpoenas). It further asks, among other things, that KCVN and Colorado Pacific file a response to its motion by June 1.

On May 26, 2016, KCVN and Colorado Pacific jointly replied that it would be unfair to substantially shorten their reply deadline when the only reason for doing so is “V&S’s dilatory actions” in failing to pursue discovery earlier. They argue that due to commitments of counsel, it is imperative that they have the full 20 days to reply to V&S’s motion for subpoenas. On June 1, 2016, the applicants’ proposed operator, Kansas and Oklahoma Railroad, filed a reply opposing V&S’s motion for subpoenas and objecting to the expedited schedule V&S seeks in that motion. V&S filed a response on June 2, 2016. On June 7, 2016, the Board ordered that applicants’ reply to V&S’s motion for subpoenas is due by June 14, 2016.

On June 13, 2016, Bartlett Grain Company, LP (Bartlett), a non-party to this proceeding, filed a letter objecting to V&S’s motion for subpoenas, which would be addressed to Bartlett and other shippers individually. Bartlett requests that the motion for subpoenas be denied and states that if the subpoenas were issued, Bartlett would vigorously oppose any subpoena. On June 14, 2016, KCVN and Colorado Pacific jointly filed a reply to V&S’s motion for subpoenas, arguing that the motion should be denied because there is no justification or need for discovery of additional information from the non-parties for V&S to adequately respond to the application or for the Board to evaluate it.

The Board has signed a Memorandum of Understanding with the Federal Energy Regulatory Commission (FERC) to employ the services of FERC administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes between parties in cases pending before the Board.

By a decision served on June 7, 2016, the Director of the Board's Office of Proceedings assigned and authorized Administrative Law Judge John P. Dring of FERC to entertain and rule upon discovery matters and to resolve all disputes concerning discovery in this proceeding.

Notwithstanding the scheduling of the oral argument ordered below, the parties are strongly encouraged to make intensive, good faith efforts to resolve outstanding discovery disputes without the need for judicial intervention, both prior to the conference and thereafter. Any questions pertaining to this discovery proceeding should be direct to Judge Dring's law clerk, Thomas C. Kirby, who may be contacted at (202) 502-8104 or thomas.kirby@ferc.gov.

It is ordered:

1. An oral argument on the V&S Motion for Subpoenas is scheduled for Wednesday, July 13, 2016, beginning at 10:00 a.m. in a hearing room to be designated at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. This oral argument will be held on the record. All parties to this dispute are directed to attend, and non-parties subject to the requested subpoenas may attend.
2. This decision is effective on its service date.

By the Board, John P. Dring, Administrative Law Judge.